

LA Pdon, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FIVE BOROUGH BICYCLE CLUB, et al.,

Plaintiffs,

PRETRIAL ORDER

-against-

Case No. 07 CIV. 2448 (LAK)

THE CITY OF NEW YORK, et al.,

Defendants.
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The parties having conferred among themselves and with the Court pursuant to Fed. R. Civ. P. 16, the following statements, directions and agreements are adopted as the Pretrial Order herein.

I. NATURE OF THE CASE

Plaintiffs are six individual bicyclists and the Five Borough Bicycling Club ("5BBC"). Defendants are the City of New York, Raymond Kelly, the Commissioner of the New York City Police Department ("NYPD"), and four other members of the NYPD. Plaintiffs claim that Defendants have violated their First Amendment rights of association, expression and travel, their Fourteenth Amendment rights of due process and equal protection under the laws, and their state law right to travel by bicycle.

Specifically, Plaintiffs claim that Defendants have selectively directed law enforcement actions against participants in a bicycling event known as Critical Mass held monthly in Manhattan, including certain of the individual Plaintiffs, in retaliation for the exercise of their First Amendment rights of expressive association and freedom of speech. In addition, Plaintiffs claim that their First and Fourteenth Amendment rights are

violated by Defendants' amendment and enforcement of the "Parade Rules," New York City Administrative Code § 10-110 and rules promulgated thereunder, with respect to group bicycle rides. Further, Plaintiffs claim that Defendants have violated Plaintiffs' rights under New York State Vehicle and Traffic Law ("VTL") §1231, which grants bicyclists all of the rights applicable to motorists except those that by their nature have no application to bicyclists.

Defendants deny all of Plaintiffs' claims. Defendants maintain that the Parade Rules are valid time, place and manner restrictions that do not violate plaintiffs' rights of association, expression and travel. Defendants maintain the Parade Rules do not constitute a prior restraint, are not vague and do not violate due process. Defendants maintain that their policing of the monthly Manhattan Critical Mass event was appropriate, and the enforcement actions taken against some of the individual plaintiffs were not retaliatory nor did they constitute selective enforcement. Defendants also maintain that they have not denied plaintiffs any rights they may have under VTL § 1231.

Plaintiffs seek injunctive relief requiring, among other things, that Defendants be enjoined (a) from taking discriminatory enforcement actions against any individual on the basis of actual or perceived affiliation with any bicycling group, organization or event; (b) from enforcing the Parade Rules and related regulations and policies in a manner that violates Plaintiffs' rights; and (c) to maintain records of certain instances when groups of bicyclists are subjected to law enforcement. Plaintiffs seek an independent monitor to review and evaluate Defendants' compliance with the requested injunction. Plaintiffs also seek an award of attorneys' fees.

II. JURY/NON-JURY

This is a non-jury trial. Plaintiffs estimate that they will need four trial days to present evidence. Defendants estimate that they will need three trial days to present evidence.

III. STIPULATED FACTS

1. Manhattan Critical Mass is a group bicycle ride that typically departs from Union Square Park at approximately 7:30 p.m. on the last Friday of each month.

2. Plaintiff 5BBC is a not-for-profit bicycle club that promotes group bicycling in New York City by organizing group bicycle trips and through other activities. 5BBC organizes approximately 250 group bicycle rides to take place at least in part within New York City each year, eleven of which in the period since January 2004 included 50 or more participants. 5BBC has applied to the New York Police Department (“NYPD”) for a parade permit four times, and has been granted a permit three times. One permit application by 5BBC is currently pending. NYPD has never denied a parade permit application submitted by 5BBC, and has never denied 5BBC permission to conduct a group bicycle ride.

3. Plaintiff Kenneth T. Jackson is a Professor of History at Columbia University and a preeminent scholar of New York City history. Jackson typically organizes one group bicycle ride each year, on which he conducts a nighttime tour of New York City for approximately 250 of his students and others. In 2007, Jackson arranged (or had someone arrange) to have an ambulance accompany this annual group bicycle ride. In 2007, he applied for and received a permit for his annual ride. The NYPD has never denied a parade permit application submitted by Jackson, and has never denied Jackson permission to conduct the “Columbia All-Night Bike Ride.” Jackson has

never participated in a Critical Mass ride in Manhattan or elsewhere.

4. Plaintiff Sharon Blythe is a resident of New York, New York. She participates in group bicycle rides in New York City. Blythe participated in Manhattan Critical Mass rides from 2001 to 2005. Blythe was arrested for disorderly conduct (PL 240.20(5)) and parading without a permit (AC 10.110) during a Manhattan Critical Mass ride in July 2005, and has not attended a Manhattan Critical Mass ride since her arrest. All of the charges against Blythe related to this arrest were dismissed. Blythe rode on the FDR Drive during a Manhattan Critical Mass ride on July 30, 2004, and rode over the Queensboro Bridge during a Manhattan Critical Mass ride on October 31, 2003.

5. Plaintiff Josh Gosciak is a resident of New York, New York. He participates in group bicycle rides in New York City and is a member of 5BBC. Gosciak participated or sought to participate in Manhattan Critical Mass rides during the period of January 2004 through November 2004. He also observed a Manhattan Critical Mass ride in May 2006 and participated in a Manhattan Critical Mass ride in March 2009. Gosciak was never arrested or issued a summons at a Manhattan Critical Mass ride. Gosciak is a member of 5BBC. Since January 1, 2004, Gosciak has not led a group bicycle ride sponsored or organized by 5BBC in which fifty or more bicyclists participated. Gosciak has never applied for a parade permit from the NYPD.

6. Plaintiff Madeline Nelson is a resident of Brooklyn, New York. She participates in group bicycle rides in New York City. Nelson participated in Manhattan Critical Mass rides on the following dates: October 29, 2004; November 26, 2004; January 28, 2005; February 25, 2005; March 25, 2005; May 27, 2005; June 24, 2005; July 29, 2005; August 26, 2005; September 30, 2005; October 28, 2005; November 25, 2005; December 30, 2005; March 31, 2006; April 28, 2006; May 26, 2006; June 30, 2006; July 28, 2006; August 25, 2006; October 27, 2006; November 24, 2006; and May

30, 2008. Nelson was arrested at the Manhattan Critical Mass rides in February 2005 for disorderly conduct and parading without a permit and in December 2005 for disorderly conduct and parading without a permit. She received summonses at Manhattan Critical Mass rides in November 2006 for an improperly-mounted taillight and in May 2008 for not keeping far enough to the right (34 RCNY 4-12[p][3]). Nelson's bicycle did not have a taillight at the time she was issued a summons in November 2006. Nelson rode over the Queensboro Bridge during a Manhattan Critical Mass ride on June 24, 2005.

7. Plaintiff Elizabeth Shura is a resident of Brooklyn, New York. She has participated in group bicycle rides in New York City. Shura participated in Manhattan Critical Mass rides on the following dates: September 24, 2004; October 29, 2004; November 26, 2004; and December 31, 2004. Shura was arrested during a Manhattan Critical Mass ride in October 2004 for disorderly conduct (PL 240.20(5)) and parading without a permit (AC 10.110). After a trial, Shura was found not guilty of all of the charges related to this arrest. Shura has not participated in a group bicycle ride since May 20, 2005.

8. Plaintiff Luke Son is a resident of Brooklyn, New York. He participates in group bicycle rides in New York City. Son participated in Manhattan Critical Mass rides from 2005 through 2007. Son received a summons at a Manhattan Critical Mass ride in February 2006 for proceeding through a steady red signal.

9. Defendant the City of New York (the "City") is a municipal entity organized and existing under the laws of the State of New York. It is authorized by law to maintain a police department, the NYPD, which acts as an agent in the area of law enforcement.

10. Defendant Raymond Kelly has been the Police Commissioner of the NYPD since January 2002.

11. Defendant James Tuller has served as an Assistant Chief in the NYPD and the Commanding Officer of Patrol Borough Manhattan South since February 2007. In this capacity, Tuller supervises NYPD personnel assigned to police Manhattan Critical Mass rides.

12. Defendant Thomas Graham is a Deputy Chief of the NYPD and has served as Commander of the NYPD Disorder Control Unit since 1993. In this capacity, Graham has supervised NYPD personnel assigned to police Manhattan Critical Mass rides.

13. Defendant Daniel Albano has been a Lieutenant in the NYPD assigned to its Legal Bureau since at least 2004. In this capacity, Albano provides legal advice to NYPD personnel assigned to police Manhattan Critical Mass rides.

14. Defendant Stephen Paragallo was a Deputy Chief in the NYPD assigned as Executive Officer of Patrol Borough Manhattan South from March 2004 through June 2008. In this capacity, Paragallo supervised NYPD personnel assigned to police Manhattan Critical Mass rides.

15. From September to November 2004, the average number of participants in Manhattan Critical Mass rides was 1,733, while the average police presence was in excess of 533 officers. During that time period, 58 arrests were made and 7 summonses were issued by NYPD officers assigned to Manhattan Critical Mass, for an average of 19 arrests and 2 summonses at each ride. A table showing the numbers of participants, police officers, arrests and summonses from which these averages are derived is attached as Appendix A.

16. In 2005, the average number of participants in Manhattan Critical Mass rides was 200, while the average police presence was in excess of 158 officers. During that year, 238 arrests were made and 21 summonses were issued by NYPD officers

assigned to Manhattan Critical Mass, for an average of 22 arrests and 2 summonses at each ride. A table showing the numbers of participants, police officers, arrests and summonses from which these averages is derived is attached as Appendix B.

17. In 2006, the average number of participants in Manhattan Critical Mass rides was 170, while the average police presence was in excess of 116 officers. During that year, 24 arrests were made and 450 summonses were issued by NYPD officers assigned to Manhattan Critical Mass, for an average of 2 arrests and 38 summonses at each ride. A table showing the numbers of participants, police officers, arrests and summonses from which these averages are derived is attached as Appendix C.

18. In 2007, the average number of participants in Manhattan Critical Mass rides was 89, while the average police presence was in excess of 110 officers. During that year, 4 arrests were made and 374 summonses were issued by NYPD officers assigned to Manhattan Critical Mass, for an average of less than 1 arrest and 31 summonses at each ride. A table showing the numbers of participants, police officers, arrests and summonses from which these averages are derived is attached as Appendix D.

19. From January through August 2008, the average number of participants in Manhattan Critical Mass rides was 31. During that time period, 2 arrests were made and 98 summonses were issued by NYPD officers assigned to Manhattan Critical Mass, for an average of less than 1 arrest and 20 summonses at each ride. A table showing the numbers of participants, arrests and summonses from which these averages are derived is attached as Appendix E.

20. Of 34 summonses issued by NYPD officers assigned to the June 29, 2007 ride, 26 summonses were issued before 8:00 p.m.

21. All of the 40 summonses issued by NYPD officers assigned to the July 27, 2007 ride were issued prior to 7:52 p.m.

22. Forty-two of the 45 summonses issued by NYPD officers assigned to the August 31, 2007 ride were issued prior to 8:00 p.m.

23. Of 59 summonses issued by NYPD officers assigned to the September 28, 2007 ride, 48 summonses were issued prior to 8:15 p.m.

24. Of 12 summonses issued by NYPD officers assigned to the October 26, 2007 ride, 9 summonses were issued prior to 7:53 p.m., the time at which, according to an NYPD document, the Manhattan Critical Mass ride that evening commenced.

25. Of 53 summonses issued by NYPD officers assigned to the November 30, 2007 ride, 47 summonses were issued prior to 7:57 p.m., the time at which, according to an NYPD document, the Manhattan Critical Mass ride that evening commenced.

26. In connection with the August 27, 2004 Manhattan Critical Mass ride, NYPD arrested at least 260 group bicyclists on charges including violation of NYAC 10-110 (parading without a permit).

27. The 11 summonses issued at the May 25, 2007 Manhattan Critical Mass ride for violation of New York City Administrative Code Section 10-110 (parading without a permit) are the only summonses for that violation issued by NYPD personnel assigned to Critical Mass details during the period of February 25, 2007 through August 31, 2008.

28. Officer Russo issued the following summonses while assigned to Critical Mass detail on April 29, 2005: 424600815-1 [NYC02167]; 424600816-3 [NYC02167]. Officer Bynum wrote the following summons while assigned to Critical Mass detail on April 29, 2005: 424671125-1 [NYC02169]. Officer Gore wrote the following summonses while assigned to Critical Mass detail on April 29, 2005: 424828959-3 [NYC02170]; 424828954-4 [NYC02171].

29. Brooklyn Critical Mass is a group bicycle ride that typically departs from

Grand Army Plaza in Brooklyn at approximately 7:30 p.m. on the second Friday of each month. The NYPD has typically assigned a police detail to Brooklyn Critical Mass since at least October 2004. Brooklyn Critical Mass has no designated leaders or decision-making structure, and the ride does not have a fixed route. Plaintiffs Nelson, Gosciak, Son and Shura have participated in Brooklyn Critical Mass rides.

30. NYPD officers assigned to Brooklyn Critical Mass rides have directed the participants to proceed through steady red signals. On occasion, participants in Brooklyn Critical Mass rides have, in the presence of NYPD officers, ridden in a group occupying the entire roadway, proceeded outside of bicycle lanes, or taken up stationary positions to prevent intersecting traffic from proceeding through the roadway in which the bicyclists are riding (this is sometimes called “corking”). Participants in Brooklyn Critical Mass rides have engaged in this conduct as recently as July 2008. There have been no summonses issued or arrests made in connection with any Brooklyn Critical Mass Ride.

31. The NYPD was aware of the following group bicycle rides and group motorcycle rides in advance of the date on which they occurred, and assigned NYPD staff to the rides: Columbia University Bike Race (3/19/2005); Bike For Life to Yankee Stadium (5/13/2005); Free Wheels Ride of Silence (5/18/05); Free Wheels/Time’s Up Bike Ride (“Still We Ride”) (8/18/05); “Operation Time’s Up” ride (8/20/05); 2006 EMS Memorial Bike Ride (5/21/2006); Time’s Up – Memorial Ride for Bicyclists Killed in 2006 (1/7/07); Ride to End All Wars (Critical Mass) (3/18/07); Father’s Day Cycling Race (6/17/2007); Breaking the Cycle Ride for AIDS (9/30/2007); Time’s Up Bicyclist Memorial Ride (1/6/08); Ground Zero Motorcycle Ride (7/26/2008). NYPD anticipated that several hundreds of participants would attend the Free Wheels/Time’s Up Bike Ride (“Still We Ride”) (8/18/05). NYPD anticipated that several hundreds of participants would attend the “Operation Time’s Up” ride (8/20/05). NYPD anticipated that

approximately 75 participants would attend the Time's Up – Memorial Ride for Bicyclists Killed in 2006 (1/7/07). NYPD anticipated that between 300 and 600 participants would attend the Father's Day Cycling Race (6/17/2007). NYPD anticipated that approximately 500 participants would attend the Ground Zero Motorcycle Ride (7/26/2008).

32. In 2006, NYPD and the New York City Departments of Health and Mental Hygiene, Parks and Recreation, and Transportation issued a report entitled "Bicyclist Fatalities and Injuries in New York City: 1996-2005" (the "Joint Report"). After the issuance of the Joint Report, a follow-up analysis was conducted of 211 of the 225 incidents involving bicyclist fatalities included in the Joint Report. The analysis included a review of, among other things, the circumstances surrounding each such incident for which such information was available. An insignificant number of the fatalities referred to in the Joint Report, if any, involved an individual proceeding as part of a group of two or more bicyclists.

33. No follow-up analysis was performed on the 3,462 cases of serious injury included in the Joint Report. None of the instances of serious injury referred to in the report involved individuals proceeding as part of a group of two or more bicycles.

34. By operation of the Rules & Regulations of the City of New York, Title 34, section 4-02 (e), VTL §1234, including its subsections (a) – (c), was not applicable in New York City at any time relevant to this litigation. VTL § 1234(a) provides that bicyclists must on certain roadways keep to the right and ride no more than two abreast. Defendants City of New York and Police Commissioner Kelly conceded in a federal court proceeding on October 27, 2004 that VTL § 1234 was superseded by City regulations. From March 2006 through August 2008, summonses citing VTL § 1234 were issued by NYPD officers assigned to the Manhattan Critical Mass detail.

35. Subsection 4-12(p)(3) of Chapter 34 of the Rules of the City of New York applies only on one-way roadways that are at least 40 feet in width.

36. Of the 73 summonses for violation of 4-12(p)(3) that are confirmed to have been issued by NYPD officers assigned to Critical Mass details, 30 of them were issued to bicyclists traveling on streets narrower than 40 feet or with two-way traffic.

37. NYPD officers assigned to Manhattan Critical Mass rides issued summonses for violation of subsection 4-12(p)(3) to bicyclists proceeding on the following roadways that are less than 40 feet wide: Union Square West (10 summonses); East 40th Street (3 summonses); East 51st Street (3 summonses); East 24th Street (1 summonses); East 18th Street (1 summons); East 41st Street (1 summons); 49th Street (1 summons).

38. NYPD officers assigned to Manhattan Critical Mass rides issued summonses for violation of subsection 4-12(p)(3) to bicyclists proceeding on the following roadways that are not one-way roadways: Park Avenue South (6 summonses); East 14th Street (3 summonses).

39. In March 2005, the City of New York initiated a lawsuit against Time's Up! Inc. ("Time's Up!"), a New York not-for-profit corporation, styled *City of New York, Raymond Kelly as Commissioner of the New York City Police Department, et al., v. Time's Up!, Inc., et al.*, Index No. 400891/05 (Sup. Ct. N.Y. Cty.). NYPD's complaint alleged that Time's Up! advertises, promotes and encourages Critical Mass rides and regularly hosts pre- and post-ride events at its offices, then located at 49 E. Houston Street, New York, New York. NYPD sought an order enjoining Time's Up! from advertising Critical Mass or promoting Critical Mass. The court denied the plaintiff's motion for a preliminary injunction. On February 15, 2007, the suit was discontinued by stipulation of the parties, with prejudice. NYPD officers have been assigned to take

positions outside the office of Time's Up! on several occasions, including October 27, 2006 and September 28, 2007.

40. On July 17, 2006, a Notice of Opportunity to Comment on Proposed Rule was published in the City Record together with the text of the proposed parade rule amendment. In response to public comments received before the public hearing, the NYPD withdrew its initial rule proposal prior to the hearing and modified that proposal.

41. On October 18, 2006, a new Notice of Opportunity to Comment on Proposed Rule was published in the City Record together with the text of a modified parade rule amendment, and on November 27, 2006, a public hearing was held on this proposed rule amendment.

42. In response to public comments made at the public hearing, the NYPD again modified the definition of a "parade." By Notice of Adoption published in the City Record on January 26, 2007, the NYPD adopted rule amendments which define "parade" as "any procession or race which consists of a recognizable group of 50 or more pedestrians, vehicles, bicycles or other devices moved by human power, or ridden or herded animals proceeding together upon any public street or roadway." The parade rule amendments became effective on February 26, 2007.

43. The one-way avenues in Manhattan below 59th Street are at least 40 feet in width.

44. Bicycles are prohibited from using the restricted access roadways of the Franklin Delano Roosevelt ("FDR") Drive and the Queensboro Bridge.

45. In 2006, the New York City Department of Transportation ("NYCDOT") installed 28.6 miles of on-street bicycle routes. In 2007, NYCDOT installed 61.1 miles of on-street bicycle routes. In 2008, NYCDOT installed 81.6 miles of on-street bicycle routes. To date, in 2009, NYCDOT has installed more than 31 miles of on-street bicycle

routes.

46. Since January 1, 2004, no person has submitted to the NYPD an application for a parade permit to conduct a Manhattan Critical Mass ride.

47. The NYPD has never issued a parade permit to conduct a Manhattan Critical Mass ride.

48. For the September 24, 2004 and October 29, 2004 Manhattan Critical Mass rides, a designated route for the event was established by the NYPD. The route for the September 24, 2004 ride was established following negotiations between the NYPD and an attorney with the New York Civil Liberties Union who negotiated on behalf of the bicyclists.

49. Between January 1, 2004 and February 25, 2007, 5BBC sponsored or organized eight group bicycle rides in which fifty or more bicyclists participated.

50. Since February 25, 2007, 5BBC sponsored or organized four group bicycle rides in which more than fifty bicyclists participated.

51. Between January 2004 and August 2008, over 100 5BBC day rides were scheduled to occur for which no sign up sheets could be located. Many of these day rides were cancelled due to inclement weather. For those day rides that did occur, there is no specific information available as to the number of bicyclists that participated in such day rides. No more than 49 bicyclists participated in any one of these rides.

52. In 2004, not including weekend trips or the Montauk Century, 5BBC conducted approximately 142 group bicycle rides and no more than 2225 bicyclists participated in such rides, for an average of 15.67 bicyclists per ride.

53. In 2004, not including weekend trips or the Montauk Century, 5BBC conducted 2 group bicycle rides that exceeded 50 riders. In 2004, three 5BBC group bicycle rides had between 40 and 49 riders; ten 5BBC group bicycle rides had between

30 and 39 riders; 22 5BBC group bicycle rides had between 20 and 29 riders; 52 5BBC group bicycle rides had between 10 and 19 riders; and approximately 48 5BBC group bicycle rides had less than 10 riders.

54. In 2005, 5BBC conducted 139 group bicycle rides other than the Montauk Century and weekend trips and no more than 2335 bicyclists participated in such rides, for an average of 16.8 bicyclists per ride.

55. In 2005, three 5BBC group bicycle rides exceeded fifty riders. In 2005, two 5BBC group bicycle rides had between 40 and 49 riders; eight 5BBC group bicycle rides had between 30 and 39 riders; approximately 26 5BBC group bicycle rides had between 20 and 29 riders; 62 5BBC group bicycle rides had between 10 and 19 riders; and 32 5BBC group bicycle rides had less than 10 riders.

56. In 2006, 5BBC conducted 163 group bicycle rides and not including the Montauk Century, no more than 2410 bicyclists participated in such rides, for an average of 14.79 bicyclists per ride.

57. In 2006, not including the Montauk Century, 5BBC conducted zero group bicycle rides that exceeded 50 riders. In 2006, three 5BBC group bicycle rides had between 40 and 49 riders; four 5BBC group bicycle rides had between 30 and 39 riders; 34 5BBC group bicycle rides had between 20 and 29 riders; 71 5BBC group bicycle rides had between 10 and 19 riders; and 47 5BBC group bicycle rides had less than 10 riders.

58. In 2007, 5BBC conducted approximately 155 group bicycle rides and not including the Montauk Century, no more than 2275 bicyclists participated in such rides, for an average of 14.68 bicyclists per ride.

59. In 2007, not including the Montauk Century, 5BBC conducted zero group bicycle rides that exceeded 50 riders. In 2007, one 5BBC group bicycle ride had between 40 and 49 riders; five 5BBC group bicycle rides had between 30 and 39 riders;

approximately 25 5BBC group bicycle rides had between 20 and 29 riders; 73 5BBC group bicycle rides had between 10 and 19 riders; and 44 5BBC group bicycle rides had less than 10 riders.

60. From January 1, 2008 through August 31, 2008, not including the Montauk Century, 5BBC conducted approximately 105 group bicycle rides and no more than 1508 bicyclists participated in such rides, for an average of 14.36 bicyclists per ride.

61. From January 1, 2008 through August 31, 2008, two 5BBC rides exceeded 50 riders; one 5BBC group bicycle ride had between 40 and 49 riders; approximately 7 5BBC group bicycle rides had between 30 and 39 riders; 13 5BBC group bicycle rides had between 20 and 29 riders; 61 5BBC group bicycle rides had between 10 and 19 riders; and approximately 26 5BBC group bicycle rides had less than 10 riders.

IV. PARTIES' CONTENTIONS

The pleadings are deemed amended to embrace the following, and only the following, contentions of the parties:

A. Plaintiffs' Contentions

Plaintiffs have an interest in organizing and participating in group bicycle rides that implicates rights of association, expression and travel protected by the First Amendment. Among the group rides in which Plaintiffs have a protected interest is the Critical Mass ride in Manhattan, which sets off from Union Square Park on the last Friday evening of each month.

Approximately since the Republican National Convention in Manhattan in 2004, Defendants have directed law enforcement actions against individual Plaintiffs and other bicyclists based on their actual or perceived association with the Manhattan Critical Mass ride, and with the intent to inhibit or punish Plaintiffs' exercise of their rights to

participate in the ride, or with malicious or bad faith intent to injure Critical Mass participants. Defendants have not directed such actions against other groups that are similarly situated, including riders in similar group bicycle rides. Defendants' actions are not justified by legitimate governmental concerns. Arrests and summonses of individual plaintiffs were not supported by probable cause.

Defendants' actions have chilled Plaintiffs from exercising their rights to participate in Manhattan Critical Mass or merely to ride bicycles in the vicinity of Union Square Park on the last Friday evening of the month due to their fear of being subjected to law enforcement actions for entirely lawful conduct.

Furthermore, Defendants have denied Plaintiffs rights conferred upon bicyclists by VTL §1231, which provides for equal rights and responsibilities of bicyclists and motorists. Defendants have violated Plaintiffs' rights under VTL §1231 by, among other actions, ticketing and harassing certain individual Plaintiffs for exercising their legal right to occupy a lane of traffic while bicycling, and by systematically applying invalid interpretations of the traffic laws.

In addition, Plaintiffs' rights of freedom of travel, association, expression and due process are violated by Defendants' amendment and enforcement of the Parade Rules with respect to group bicycle rides.

Plaintiffs otherwise rest on the statement of facts and legal issues in their Amended Complaint.

B. Defendants' Contentions

Pursuant to the New York City Charter, the NYPD, an agency of defendant the City, is charged with preserving the public peace and maintaining public safety. The NYPD is also charged with enforcing the Parade Permit provisions set forth in New York

City Administrative Code § 10-110 and rules promulgated thereunder. The Parade Rules' application to group bicycle rides of fifty or more individuals in which plaintiffs participate are valid time, place and manner restrictions that do not violate plaintiffs' rights of association, expression and travel. Nor are the Parade Rules unconstitutionally vague or violative of due process. In addition, the application process for obtaining a parade permit does not constitute a prior restraint.

Plaintiffs do not have a state-based private right of action under VTL § 1231. Moreover, even if they had such a cause of action, defendants have not denied plaintiffs any rights they may have under VTL § 1231.

The monthly Manhattan Critical Mass bike ride, which occurs on the last Friday of the month in heavily congested Manhattan, is a unique event; at times these rides have involved hundreds (and thousands) of bicyclists traveling together with no planned route and engaging in rampant traffic violations such as disobeying red traffic lights or riding the wrong way down a one way street. Defendants' policing of the Manhattan Critical Mass rides is consistent with NYPD's efforts to maintain public safety. The defendants have not selectively enforced or retaliated against the individual plaintiffs, and any enforcement action they took against these plaintiffs was not based on plaintiffs' first amendment expressive activities, but rather based on legitimate law enforcement concerns.

V. ISSUES TO BE TRIED

Retaliation and Selective Enforcement

1. *Retaliation.* Whether individual Plaintiffs' participation in Critical Mass rides constitutes a protected interest under the First Amendment, and if so, whether Defendants' enforcement of the laws against individual Plaintiffs was motivated or

substantially caused by Plaintiffs' exercise of their First Amendment rights, and Defendants' enforcement actions effectively chilled individual Plaintiffs' from exercising their First Amendment rights

2. *Selective Enforcement.* Whether Defendants applied or enforced the laws against individual Plaintiffs in a different manner than they applied or enforced the laws with respect to similarly situated individuals; *and* Defendants' actions were undertaken with an intent to inhibit or punish participants in Critical Mass, or with malicious or bad faith intent to injure Critical Mass participants.

B. VTL § 1231

3. Whether Plaintiffs can assert a private right of action under VTL § 1231.

4. Whether Defendants denied individual Plaintiffs "all of the rights . . . applicable to the driver of a vehicle" directing law enforcement action against them and others when they attempted to occupy the roadway in the same manner as motor vehicles, or by applying invalid interpretations of the traffic laws.

C. Parade Rules

5. *Right to Travel.* Whether the Parade Rules actually deter Plaintiffs' travel, or impeding travel is the Parade Rules' primary objective, or the Parade Rules use any classification which serves to penalize the exercise of the right to travel, *and* whether any such government intrusion on Plaintiffs' right to travel is necessary to promote a compelling governmental interest.

6. *Right of Association.* Whether the Parade Rules constitute a direct and substantial or significant burden on Plaintiffs' right of association, and are not justified by a compelling governmental interest, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive.

7. *Freedom of Speech.* Whether the Parade Rules can be justified without

reference to the content of speech at group bicycle rides, and are narrowly tailored – that is, impose a restriction no greater than is essential to the furtherance of a significant governmental interest – and do not close off alternative channels for Plaintiffs’ expression.

8. *Prior Restraint.* Whether the permitting scheme embodied in the Parade Rules impermissibly allows NYPD officers considering such applications to “appraise facts, exercise judgment and form an opinion” and is therefore susceptible to arbitrary application; whether the permitting scheme contains “narrow, objective and definite standards” to guide NYPD officers considering applications for permits for bicycle rides.

8. *Vagueness.* Whether the definition of a “parade” under the Parade Rules is impermissibly vague and therefore “invites arbitrary enforcement” by officers enforcing the parade rules against bicyclists.

9. *Due Process.* Whether the Parade Rules violate the Due Process Clause by imposing criminal sanctions without a requirement of knowledge or intent.

V. PLAINTIFFS' EXHIBITS

1	Op ed, dated October 28, 2004, "Extremists Have Hijacked the Bike Rides," Police Commissioner Raymond W. Kelly, N.Y. Daily News	Kelly (Feb. 2009) Ex.3
2	Letter, dated September 23, 2004, from Michael Scagnelli to Times Up!	Albano (Feb. 2008) Ex. 12
3	Letter, dated August 23, 2004, from Michael Scagnelli to Paul White of Transportation Alternatives	Albano (Feb. 2008) Ex. 11
4	E-mail, dated March 14, 2007, from Michelle Fredericks to Zac Frank	NYC000242-NYC000243
5	Declaration of Lt. Daniel Albano (Oct. 25, 2004)	Albano (Jan. 2009) Ex. 5
6	Testimony of Lt. Daniel Albano In Bray (Dec. 8, 2004)	Albano (Jan. 2009) Ex. 6
7	E-mail, dated May 15, 2006, from Sheryl Neufeld to Gideon Oliver	Albano (Jan. 2009) Ex. 10
8	Summonses issued in connection with Critical Mass	NYC001947; NYC001947.02; NYC001948.03; NYC002020; NYC002020.03; NYC002021; NYC002021.02; NYC002531; NYC002563; NYC014799; NYC014800; NYC014803; NYC014804; NYC025971; NYC025973; NYC025974.02; NYC025974.03; NYC025975; NYC025975.02; NYC025975.03; NYC027104.03; NYC027120
9	2006 NYC Cycling Map	Caneco Ex. 7
10	Photograph, 14th Street in vicinity of Union Square and University Place	Caneco Ex. 6
11	CD, dated March 5, 2007, "Locally saved websites"	Caneco Ex. 9
12	NYPD, et al. report, "Bicyclist Fatalities and Serious Injuries in New York City, 1996 to 2005"	Caneco Ex. 8
13	E-mail, dated January 5, 2007, from Joan Scholvin to Joshua Benson	NYCE000315-NYCE000318
14	E-mail, dated March 12, 2007, from Zac Frank to Joan Scholvin	NYC000252-NYC000254
15	E-mail, dated May 11, 2007, from Joan Scholvin to Zac Frank	NYCE000038-NYCE000040
16	2007 draft Bike Month calendar	NYCE000930-NYCE000954

17	Application for Parade Permit (Rev. 06-07)	Jackson Ex. 4
18	Letter, dated August 29, 2005, from Kenneth Jackson to Officer Palmer	5BBC00001961-5BBC00001962
19	Parade Permit, issued to Kenneth Jackson	5BBC00011274
20	E-mail, dated Nov. 28, 2006, from Josh Gosciak to Danny Lieberman	5BBC000005237-5BBC000005238
21	E-mail, dated November 28, 2006, from James Zisfein to Josh Gosciak and Danny Lieberman	5BBC000005236
22	Records related to Sharon Blythe arrest	5BBC00007841; NYC002102-NYC002104; NYC001350; NYC001346; 5BBC00011314-5BBC00011317
23	Current 5BBC Bylaws	DeFreitas Ex. 2
24	Past 5BBC Bylaws	DeFreitas Ex. 1
25	5BBC sign-in sheets	5BBC00004222-5BBC00004228; 5BBC00004365-5BBC00004369; 5BBC00004983-5BBC00004989; 5BBC00009523-5BBC00009527
26	E-mail, dated July 21, 2006, from Edward DeFreitas to James Zisfein and B. Hoberman	5BBC000018066-5BBC000018069
27	5BBC Bulletin Board message, dated Nov. 12, 2006, by E. DeFreitas	DeFreitas Ex. 16
28	5BBC Bulletin Board message dated November 13, 2006, by John T. Chiarella	DeFreitas Ex. 17
29	NYPD Flyer	NYC000331
30	NYPD Flyer	NYC000289
31	Records related to Elizabeth Shura arrest	NYC012904; 5BBC00010275-5BBC00010289; 5BBC00010540-5BBC00010579; 5BBC00011307-5BBC00011313
32	34 Rules of the City of New York § 4-12	N/A
33	E-mail, dated Aug. 27, 2004 from Paul J. Browne to Robert Lawson	NYCE010151-NYCE010152
34	E-mail, dated Oct. 20, 2004, from Paul Browne to Graham Rayman	NYCE010134-NYCE010135

35	E-mail, dated Oct. 26, 2004, from Paul Browne to Robert Laird	NYCE010124-NYCE010125
36	E-mail, dated May 29, 2007, from Paul Browne to Chris Faherty	NYCE009864
37	2007 Montauk Century permits and related emails	5BBC00011294-11300; 5BBC00011266-11268
38	2008 Montauk Century permits	5BBC00011301-11306
39	Mobile Reserve Event Action Plan 2005-05 for Critical Mass Demonstration, May 27, 2005	NYC013078-NYC013081
40	NYPD lesson plan	NYC029602-NYC029611
41	Summonses, issued April 29, 2005	NYC002167-NYC002171; NYC002361
42	New York City Admin. Code § 19-176.1	Paragallo Ex. 14
43	Detail Roster/Assignment Sheet for Oct. 27, 2006 Critical Mass	NYC001758-NYC001768
44	Letter, dated November 9, 2007, from Emily Mathieu to New York City Police Department, Midtown North Precinct	5BBC00008557-5BBC00008560
45	Letter, dated Nov. 13, 2007, from Emily Mathieu to Deputy Chief Paragallo	5BBC00008554-5BBC00008555
46	New York State Vehicle and Traffic Law § 1234	N/A
47	Administrative Guide: Parade Permits Procedures, dated June 1, 2005	NYC001401-NYC001408
48	NYC Dept. of Transportation press release	5BBCEM00045860- 5BBCEM00045861
49	NYC Dept. of Transportation 12- and 18-Hour Bicycle Screenline Counts, 2000-2008	Beveridge Ex. 12
50	Op ed, dated July 21, 2006, "Protests and the NYPD - Keeping Speech Free and Safe," Police Commissioner Raymond W. Kelly, N.Y. Post	Kelly Ex. 4
51	Drafts of Amended Parade Permit Regulations	N/A
52	RNC Guidelines	NYC027370-NYC027410
53	News article, dated Nov. 15, 2007, "Case is Dropped Against Crusading Street Performer," Anemona Hartcollis, N.Y. Times	Tuller Ex. 10
54	Mobile Reserve Event Action Plan 2005-04 for Critical Mass Demonstration, April 29, 2005	NYC012953-NYC012956

55	Declaration, dated Feb. 23, 2007 of Thomas Graham	N/A
56	Intentionally Omitted	Intentionally Omitted
57	Freewheels Mission Statement	5BBCEM00018302
58	Summonses, issued for violation of 34 RCNY § 4-12(p)(3)	NYC002006; NYC001947; NYC002043; NYC002054; NYC002054.02; NYC002054.03; NYC002055; NYC002055.03; NYC002057; NYC002057.03; NYC002058.02; NYC002058.03; NYC002059; NYC002059.02; NYC025977; NYC027094.02; NYC027095.03; NYC027096.02; NYC027101; NYC027097.03; NYC001965
59	Arrest Record for X.C.	NYC029045-NYC029050
60	News article, dated Apr. 30, 2005, "At Least 18 Arrests Made in Tense Night of a Monthly Cycling Protest," Kareem Fahim & Jim Dwyer, N.Y. Times; News article, dated Dec. 22, 2005, "Police Infiltrate Protests, Videotapes Show," Jim Dwyer, N.Y. Times; News article, dated Feb. 24, 2006, "Aggressiveness Of Bike Chases Stirs Questions For the Police" Jim Dwyer, N.Y. Times	N/A
61	Intentionally Omitted	Intentionally Omitted
62	Memorandum, dated April 5, 2006, from Deputy Commissioner, Legal Affairs to Chief of Department	NYC025925
63	Disorder Control Unit log entry, dated Nov. 27, 2006	NYC012983
64	NYPD Patrol Guide: "Turnover" Arrests Procedure, dated Jan. 1, 2000	NYC018895-NYC018896
65	Police Student's Guide - Maintaining Public Order, dated January 2005	NYC012430-NYC012466
66	PBMS Detail Request, dated May 23, 2007	NYC002856-NYC002860
67	E-mails, dated April 27, 2004, between Joan Scholvin and Liz Weinstein	NYCE008364-8368
68	Summons, issued May 26, 2006, to Hugh McGlinchey	NYC002563

69	Records related to Madeline Nelson arrest on Feb. 25, 2005	NYC001433; NYC028833-NYC028835; NYC002110-NYC002113; 5BBC00007743- 5BBC00007757; 5BBC00008599-5BBC00008600
70	Records related to Madeline Nelson arrest on Dec. 30, 2005	NYC001432; 5BBC00007760-5BBC00007765
71	Summons, issued Nov. 24, 2006, to Madeline Nelson	NYC002227
72	Summons, issued May 30, 2008, to Madeline Nelson	5BBC00011257-5BBC00011259
73	DCU Event Action Plan, dated May 18, 2005	NYC012792-NYC012795
74	DCU Assignment Log, dated July 30, 2004-Dec. 28, 2007	NYC012960-NYC012996
75	2008 Bike Month calendar	Scholvin Ex. 4
76	2004 draft Bike Month calendar	NYCE000248-NYCE000261
77	E-mail, dated Oct. 20, 2004, from Paul Browne to campinile@nypost.com	NYCE010131
78	Intentionally Omitted	Intentionally Omitted
79	Press clippings	NYCE012282-NYCE012286
80	E-mail, dated Dec. 29, 2006, from Paul Browne to Barbara Chen	NYCE010482
81	Intentionally Omitted	Intentionally Omitted
82	Aviation Unit Flight Data Sheet, dated Aug. 26, 2005	NYC013046
83	Aviation Unit Flight Data Sheet, dated July 29, 2005	NYC013043-NYC013045
84	Aviation Unit Flight Data Sheet, dated May 27, 2005	NYC013042
85	Aviation Unit Flight Data Sheet, dated April 29, 2005	NYC013040-NYC013041
86	Intentionally Omitted	Intentionally Omitted
87	Sheet listing alleged bicycling violations, dated May 18, 2007	NYC000355 Albano (Feb 2008) Ex. 7 Paragallo (Jan 2009) Ex. 22 DeQuatro (Jan 2009) Ex. 8 Wagner (Oct 2008) Ex. 6
88	Sheet listing alleged bicycling violations, final 2006 edition	NYC027202-NYC027209
89	Sheet listing alleged bicycling violations, undated	NYC001345
90	PBMS Detail Request, dated April 26, 2005	NYC002715-NYC02724

91	Detail Request Memoranda for Brooklyn Critical Mass dates in 2007 and 2008	NYC013057-NYC013059; NYC013063-NYC013065; NYC013066-NYC013068; NYC013075-NYC013077; NYC027112-NYC027114; NYC013069-NYC013071; NYC027109-NYC027110; NYC013072-NYC013074
92	Memorandum, dated May 25 2007, from Stephen Paragallo to Chief of Patrol	NYC002047-NYC002059
93	Memorandum, dated June 29, 2007, from Stephen Paragallo to Chief of Patrol	NYC002060-NYC002072
94	Memorandum, dated July 27, 2007, from Stephen Paragallo to Chief of Patrol	NYC002027-NYC002046
95	Memorandum, dated Aug. 31, 2007, from Stephen Paragallo to Chief of Patrol	NYC002009-NYC002026
96	Memorandum, dated Sept. 28, 2007, from Stephen Paragallo to Chief of Patrol	NYC001987-NYC002008
97	Memorandum, dated Oct. 26, 2007, from Stephen Paragallo to Chief of Patrol	NYC001974-NYC001986
98	Memorandum, dated Dec. 1, 2007, from Stephen Paragallo to Chief of Patrol	NYC001953-NYC001973; NYC002077-NYC002098
99	Memorandum, dated Jan. 25, 2008, from Daniel McNulty to Chief of Patrol	NYC027951; NYC025964
100	Memorandum, dated Feb. 29, 2008, from Daniel McNulty to Chief of Patrol	NYC027952; NYC025965
101	Memorandum, dated Mar. 28, 2008, from Daniel McNulty to Chief of Patrol	NYC025966
102	Memorandum, dated Apr. 25, 2008, from Daniel McNulty to Chief of Patrol	NYC025967
103	Memorandum, dated May 30, 2008, from Daniel McNulty to Chief of Patrol	NYC025968-NYC025987
104	Memorandum, dated June 27, 2008, from Steven Anger to Chief of Patrol	NYC025988-NYC025996
105	Memorandum, dated July 25, 2008, from Steven Anger to Chief of Patrol	NYC026224-NYC026225
106	Memorandum, dated Aug. 30, 2008, from Daniel McNulty to Chief of Patrol	NYC027118-NYC027130

107	Memorandum, dated Sept. 24, 2004, from Michael Carbonaro to Chief of Patrol	NYC000287-NYC000288
108	Memorandum, dated Oct. 29, 2004, from James McCarthy to Chief of Patrol	NYC000346-NYC000347
109	Memorandum, dated Feb. 25, 2005, from Anthony Mainolfi to Chief of Patrol	NYC000285-NYC000286
110	Memorandum, dated Mar. 25, 2005, from Anthony Mainolfi to Chief of Patrol	NYC000283-NYC000284
111	Memorandum, dated Apr. 29, 2005, from Anthony Mainolfi to Chief of Patrol	NYC000281-NYC000282
112	Memorandum, dated May 27, 2007, from John Marchica to Chief of Patrol	NYC000280
113	Memorandum, dated July 29, 2005, from Stephen Hughes to Chief of Patrol	NYC000278-NYC000279
114	Memorandum, dated Aug. 26, 2005, from Raymond Potanovic to Chief of Patrol	NYC000276-NYC000277
115	Memorandum, dated Sept. 30, 2005, from Ellen Chang to Chief of Patrol	NYC000274-NYC000275
116	Memorandum, dated Oct. 28, 2005, from Ellen Chang to Chief of Patrol	NYC000272-NYC000273
117	Memorandum, dated Nov. 25, 2005, from Raymond Potanovic to Chief of Patrol	NYC000270-NYC000271
118	Memorandum, dated Dec. 30, 2005, from Stephen Hughes to Chief of Patrol	NYC000268-NYC000269
119	Memorandum, dated Jan. 27, 2006, from Joseph Panarese to Chief of Patrol	NYC000265-NYC000267
120	Memorandum, dated Feb. 24, 2006, from Stephen Hughes to Chief of Patrol	NYC000263-NYC000264
121	Memorandum, dated Mar. 31, 2006, from Frank Dwyer to Chief of Patrol	NYC000261-NYC000262
122	Memorandum, dated Apr. 28, 2006, from Raymond Caroli to Chief of Patrol	NYC026916-NYC026917
123	Memorandum, dated May 26, 2006, from Stephen Hughes to Chief of Patrol	NYC000257-NYC000258
124	Memorandum, dated June 30, 2006, from Joseph White to Chief of Patrol	NYC000255-NYC000256
125	Memorandum, dated July 28, 2006, from Joseph White to Chief of Patrol	NYC000463-NYC000464
126	Memorandum, dated Aug. 25, 2006, from Joseph White to Chief of Patrol	NYC000465-NYC000466
127	Memorandum, dated Sept. 30, 2006, from Joseph White to Chief of Patrol	NYC000467-NYC000468

128	Memorandum, dated Oct. 27, 2006, from Joseph White to Chief of Patrol	NYC000469-NYC000470
129	Memorandum, dated Nov. 24, 2006, from Joseph White to Chief of Patrol	NYC027030-NYC027031
130	Memorandum, dated Dec. 29, 2006, from Joseph White to Chief of Patrol	NYC027032-NYC027033
131	Memorandum, dated Jan. 26, 2007, from Joseph White to Chief of Patrol	NYC027034
132	Memorandum, dated Feb. 23, 2007, from John Duffy to Chief of Patrol	NYC027035
133	Memorandum, dated Mar. 30, 2007, from Edward Winski to Chief of Patrol	NYC027036-NYC027037
134	Memorandum, dated Apr. 27, 2007, from Keith Cunningham to Chief of Patrol	NYC027038-NYC027039
135	Memorandum, dated May 25, 2007, from Joseph White to Chief of Patrol	NYC027040-NYC027041
136	Memorandum, dated June 29, 2007, from Keith Cunningham to Chief of Patrol	NYC001339-NYC001340
137	Memorandum, dated July 27, 2007, from Edward Winski to Chief of Patrol	NYC001337-NYC001338
138	Memorandum, dated Aug 31, 2007, from Joseph White to Chief of Patrol	NYC001341-NYC001342
139	Memorandum, dated Sept. 28, 2007, from Keith Cunningham to Chief of Patrol	NYC001343-NYC001344
140	Memorandum, dated Oct. 26, 2007, from Joseph White to Chief of Patrol	NYC001335A-NYC001336
141	Memorandum, dated Nov. 30, 2007, from Joseph White to Chief of Patrol	NYC027042-NYC027043
142	Memorandum, dated Dec. 28, 2007, from Edward Winski to Chief of Patrol	NYC027044-NYC027045
143	Memorandum, dated Jan. 25, 2008, from Keith Cunningham to Chief of Patrol	NYC025933-NYC025934
144	Memorandum, dated Feb. 29, 2008, from Keith Cunningham to Chief of Patrol	NYC025935-NYC025936
145	Memorandum, dated Mar. 29, 2008, from Dennis DeQuatro to Chief of Patrol	NYC025937-NYC025938
146	Memorandum, dated Apr. 26, 2008, from Dennis DeQuatro to Chief of Patrol	NYC025939-NYC025940

147	Memorandum, dated May 30, 2008, from Commanding Officer, Ninth Precinct, to Chief of Patrol	NYC025941-NYC025942
148	Memorandum, dated June 27, 2008, from Dennis DeQuatro to Chief of Patrol	NYC027046-NYC027047
149	Memorandum, dated July 25, 2008, from Michael Carbonaro to Chief of Patrol	NYC026227-NYC026228
150	Memorandum, dated Oct. 31, 2008, from Timothy Beaudette to Chief of Patrol	NYC027074-NYC027075
151	Summons and verified complaint in <u>NYC, et al v. Time's Up!, et al.</u> , March 18, 2006	N/A
152	Demonstrative A – Bicycling-Related Summoning Rate in 13th Precinct from Feb 1, 2006 - Feb 1, 2008	N/A
153	Demonstrative B - Bicycling-Related Summoning Rate 6 to 11 p.m. Brooklyn vs. Manhattan Critical Mass Days	N/A
154	Demonstrative C - Manhattan Critical Mass Arrests and Summonses Sep 2004 - Aug 2008	N/A
155	Demonstrative D - Law Enforcement Action and Declining Participation in Manhattan Critical Mass Rides: Sept 2004 - Aug 2008	N/A
156	Demonstrative E - Declining Participation in Manhattan Critical Mass Rides: Sept 2004 - Aug 2008	N/A
157	DCU Command Post Log, dated Sept. 24, 2004	NYC013090-NYC013093
158	Command Post Log, dated Oct. 29, 2004	NYC001879-NYC001882
159	Command Post Log, dated Nov. 26, 2004	NYC001883-NYC001884
160	Command Post Log, dated Dec. 31, 2004	NYC013086-NYC10388

161	Command Post Log, dated Jan. 28, 2005	NYC001885
162	Command Post Log, dated Feb. 25, 2005	NYC001886-NYC001887
163	Command Post Log, dated Mar. 25, 2005	NYC001888-NYC001889
164	Command Post Log, dated Apr. 29, 2005	NYC001890-NYC001892
165	DCU Command Post Log, dated Apr. 29, 2005	NYC012936-NYC012939; Paragallo Ex. 10
166	Command Post Log, dated May 27, 2005	NYC001893-NYC001894
167	Command Post Log, dated June 24, 2005	NYC001895-NYC001896
168	Command Post Log, dated July 29, 2005	NYC001897-NYC001898
169	Command Post Log, dated Aug. 26, 2005	NYC001327-NYC001330
170	Command Post Log, dated Sept. 30, 2005	NYC001903-NYC001905
171	Command Post Log, dated Nov. 25, 2005	NYC001908
172	Command Post Log, dated Jan. 27, 2006	NYC001909-NYC001910
173	Command Post Log, dated Feb. 24, 2006	NYC001911-NYC001912
174	Command Post Log, dated Mar. 31, 2006	NYC001913-NYC001914
175	Command Post Log, dated Apr. 28, 2006	NYC001915-NYC001916
176	Command Post Log, dated May 26, 2006	NYC001917-NYC001918
177	Command Post Log, dated June 30, 2006	NYC001919-NYC001921
178	Command Post Log, dated July 28, 2006	NYC001922
179	Command Post Log, dated Aug. 25, 2006	NYC001923-NYC001924
180	Command Post Log, dated Sept. 30, 2006	NYC001925
181	Command Post Log, dated Oct. 27, 2006	NYC001926
182	Video created by Stuart Desser on April 29, 2005	5BBCVID000001
183	Video created by Eileen Clancy on March 18, 2007	5BBCVID000002

184	Video available on New York Times website entitled "N.Y.C. Police Surveillance"	5BBCVID000009
185	Video available on New York Times website entitled "Police Chase Cyclists"	5BBCVID000010
186	Video created by Stuart Desser on July 27, 2007	5BBCVID000012
187	Video created by Stuart Desser on Sept. 28, 2007	5BBCVID000013
188	Video created by Stuart Desser on Sept. 28, 2007	5BBCVID000014
189	Video created by Vlad Teichberg on June 27, 2008	5BBCVID000016
190	Video created by Brendan Neubauer on June 27, 2008	5BBCVID000018
191	Video created by Steve Vaccaro on July 11, 2008	5BBCVID000019
192	Video created by Leon Ivangoratsky on May 25, 2007	5BBCVID000076
193	Video created by unknown videographer on June 29, 2007	5BBCVID000101
194	Video created by TARU on April 29, 2005	NYC008766
195	Video created by TARU on Sept. 30, 2005	NYC008773
196	Video created by NYPD on Aug. 6, 2004	NYC010976
197	Audio clip created by TARU on June 27, 2008	NYC026111
198	Video compiled by Eileen Clancy including video created by Eileen Clancy, Bill DiPaola, Christopher Ryan, Phillip Josselyn and Elizabeth Press	5BBCVID000102
199	Video created by Eileen Clancy on Jan. 27, 2006	5BBCVID000103
200	Video compiled by Eileen Clancy including video created by Elizabeth Press, Bill DiPaola and John Hamilton	5BBCVID000104
201	Video created by Steve Vaccaro on July 11, 2008	5BBCVID000021
202	Video created by Steve Vaccaro on July 11, 2008	5BBCVID000022
203	Video created by Steve Vaccaro on July 11, 2008	5BBCVID000023

204	Video created by Steve Vaccaro on July 11, 2008	5BBCVID000025
205	Intentionally Omitted	Intentionally Omitted
206	Intentionally Omitted	Intentionally Omitted
207	Intentionally Omitted	Intentionally Omitted
208	Command Post Log, dated Nov. 24, 2006	NYC001927-NYC001928
209	Command Post Log, dated Dec. 29, 2006	NYC001929
210	Command Post Log, dated Jan. 26, 2007	NYC027217
211	Command Post Log, dated Feb. 23, 2007	NYC001930
212	Command Post Log, dated Mar. 30, 2007	NYC001931-NYC001932
213	Command Post Log, dated Apr. 27, 2007	NYC001933
214	Command Post Log, dated May 25, 2007	NYC001934
215	Command Post Log, dated June 29, 2007	NYC001935-NYC001936
216	Command Post Log, dated July 27, 2007	NYC001937-NYC001938
217	Command Post Log, dated Aug. 31, 2007	NYC001939
218	Command Post Log, dated Sept. 28, 2007	NYC001940-NYC001941
219	Command Post Log, dated Oct. 26, 2007	NYC001942
220	Command Post Log, dated Nov. 30, 2007	NYC001943-NYC001944
221	Command Post Log, dated Dec. 28, 2007	NYC027218
222	Command Post Log, dated Jan. 25, 2008	NYC025959
223	Command Post Log, dated Feb. 29, 2008	NYC025960
224	Command Post Log, dated Mar. 28, 2008	NYC025961
225	Command Post Log, dated Apr. 25, 2008	NYC025962
226	Command Post Log, dated May 30, 2009	NYC025963
227	Command Post Log, dated June 27, 2008	NYC027219
228	Command Post Log, dated July 25, 2008	NYC026217

229	Command Post Log, dated Aug. 29, 2008	NYC027065-NYC027066
230	Command Post Log, dated Sept. 26, 2008	NYC027073
231	Command Post Log, dated Oct. 31, 2008	NYC027082-NYC027085
232	Detail Roster/Assignment Sheet, dated Aug. 20, 2005	NYC001587-NYC001599
233	NYPD-Monitored Group Processions	NYC030643; NYC030652; NYC030671; NYC030680; NYC030684; NYC030688; NYC030708; NYC030713; NYC030716; NYC030736
234	"Red Means Go" Report, dated May 20, 2001	N/A
235	"Thinking Outside the Box" Report, dated July 2006	N/A
236	Memorandum, dated December 29, 2006 from Stephen Paragallo to Chief of Patrol	NYC001946-NYC001952
237	NYPD Details Roster/Assignment sheets for Critical Mass Ride, April 29, 2005	NYC001517, NYC001525
238	Demonstrative F, Exhibit to Assist A. Beveridge Testimony; Report of A. Beveridge, Nov. 11, 2008	N/A
239	Video created by TARU on May 25, 2007	NYC08786
240	Bray v. NYC 2004 U.S. Dist LEXIS 25722	Kelly Ex. 8
241	Plaintiff's Responses and Objections to Defendants' Second Set of Interrogatories and Second Request for Production of Documents (Feb. 20, 2008)	Blythe Ex. 2
242	Plaintiff Sharon Blythe's Amended Responses and Objections to Defendants' Second Set of Interrogatories and Second Request for Production of Documents (Jun. 19, 2008)	Blythe Ex. 3
243	Bike Lift Photo	5BBC00007834 Blythe Ex. 4
244	Declaration of Sharon Blythe (Mar. 15, 2007)	Blythe Ex. 5

245	Detail Roster/Assignment Sheets (Jun. 29, 2007)	NYC001815-NYC001826 Winski Ex. 10
246	Affidavit of Joseph S. Caneco in Support of Plaintiffs' Motion for Preliminary Injunction (NYC v. Times Up!, Inc.) dated, Oct. 6, 2005	Caneco Ex. 3
247	Summons issued to T.R., dated Aug. 25, 2006	Caneco Ex. 4
248	Declaration of Elizabeth Shura (Mar. 19, 2007)	Shura Ex. 2
249	Declaration of Kenneth Jackson (Mar. 21, 2007)	Jackson Ex. 1
250	Parade Permit and Related Documents Issued to Elaine Brower	NYC012997-NYC013009 Smolka Ex. 1
251	Parade Permit Application and Disapproval Documents of Edward Juarez	NYC013343-NYC013348 Smolka Ex. 2
252	Testimony of Bruce Smolka in RNC Litigation (Jan. 9, 2007)	Smolka Ex. 6
253	Compilation of Records Produced by Plaintiffs Related to RNC	5BBC00001979- 5BBC00001980; 5BBC00001983- 5BBC00001984; 5BBC00001997 Smolka Ex. 7
254	PBMS Detail Report, dated Oct. 27, 2004	NYC002624-NYC002637 Smolka Ex. 9
255	PBMS Detail Report, dated Sep. 23, 2004	NYC002611-NYC002614 Smolka Ex. 13
256	Testimony of Bruce Smolka in Bray (Jan. 9, 2007)	Smolka Ex. 14
257	Memo book of Richard Evans dated, Sep. 28, 2007	Evans Ex. 8
258	NYPD Audio July 25, 2008	NYC026226
259	NYC Police Academy Training Memo	NYC027528-NYC027529 Turco Ex. 11A
260	2008 NYC Cycling Map	Scholvin Ex. 1
261	E-mail from Eric Furman to Joan Scholvin, dated March 11, 2004	NYCE008483-NYCE008525 Scholvin Ex. 9
262	E-mail from Joan Scholvin to Richard Gans, dated April 25, 2005	NYCE000860-NYCE000862 Scholvin Ex. 10
263	NYPD Detail Request, dated Aug. 18, 2005, Freewheels/Time's Up Operation	NYC030741-NYC030745
264	NYPD Detail Request, dated Aug. 19, 2008, Times-Up Operation	NYC030747-NYC030751

265	NYPD Detail Request, dated March 15, 2007, United Peace and Justice Anti-War March	NYC030752-NYC030763
266	NYPD Escort Report #1078, Ground Zero Motorcycle Ride	NYC030782
267	NYPD Detail Request, Father's Day Cycling Race	NYC030784-NYC030785
268	NYPD Assignment Log, 2007 Memorial Bike Ride	NYC030789
269	Plaintiffs' Second Set of Requests for Admissions Directed to Defendants (January, 3 2009) and Defendants' Responses and Objections to Plaintiff's Second Set of Request for Admissions Directed to Defendants (February 20, 2009)	N/A
270	Arrest with Parading In the Narrative Form 2004 to 2008.pdf	NYC030790-NYC030799
271	Video created by Vlad Teichberg on June 27, 2008 plus embedded transcript	5BBCVID000016
272	Video created by Stu Desser on April 29, 2005 plus embedded transcript	5BBCVID000001

Plaintiffs reserve the right to use or introduce into evidence any and all exhibits on Defendants' exhibit list.

VI. DEFENDANTS' EXHIBITS

Exhibit #	Description	I.D./Bates
A	October 29, 2004 Manhattan Critical Mass Detail Request	NYC002624
B	September 24, 2004 Manhattan Critical Mass footage	NYC008755
C	May 27, 2005 Manhattan Critical Mass footage	NYC008768
D	June 24, 2005 Manhattan Critical Mass footage	NYC008769
E	August 29, 2008 Manhattan Critical Mass footage	NYC026827
F	April 29, 2005 NYPD Handout to cyclists	NYC000290
G	May 27, 2005 NYPD Handout to cyclists	NYC000321
H	September 30, 2005 NYPD Handout to cyclists	NYC000323
I	October 28, 2005 NYPD Handout to cyclists	NYC000324
J	November 25, 2005 NYPD Handout to cyclists	NYC000325
K	December 30, 2005 NYPD Handout to cyclists	NYC000326

L	January 27, 2006 NYPD Handout to cyclists	NYC000327
M	March 31, 2006 NYPD Handout to cyclists	NYC000328
N	March 30, 2007 NYPD Handout to cyclists	NYC000039
O	Footage of Professor Jackson's 2007 Columbia All-Night Bike Ride	5BBCVID0000029
P	Footage of Professor Jackson's 2007 Columbia All-Night Bike Ride	5BBCVID0000030
Q	Footage of Professor Jackson's 2007 Columbia All-Night Bike Ride	5BBCVID0000031
R	Footage of Professor Jackson's 2007 Columbia All-Night Bike Ride	5BBCVID0000032
S	Bulletin Board Posting	5BBCCEM00016175
T	E-Mail from Danny Lieberman to Jim Zisfein	5BBCCEM00007350
U	E-Mail from Alfredo Garcia to Jim Zisfein	5BBCCEM00001980
V	E-Mail from Richard Conroy to Jim Zisfein	5BBCCEM00005661
W	E-Mail from Ed Ravin to Jim Zisfein	5BBCCEM00005404
X	Bulletin Board Posting	5BBCCEM00001669
Y	Bulletin Board Posting	5BBCCEM00014192
Z	May-June 2006 <i>Bicycletter</i>	5BBCCEM00003210
AA	November- December 2006 <i>Bicycletter</i>	5BBC00000319
BB	Testimony of Transportation Alternatives	NYC001056
CC	E-Mail from Elizabeth Shura to Christopher Ryan	5BBCCEM00019404
DD	E-Mail from Brian McGloin to Elizabeth Shura	5BBCCEM00032380
EE	E-Mail from Bob Castro	5BBCCEM00026038
FF	Cue Sheet for Montauk Century Training Ride: Englewood Cliffs	5BBC00000237
GG	October 29, 2004 Critical Mass Negotiated Route	NYC000333
HH	October 30, 2004 After Action Report	NYC000341
II	Detail Request for "Shopping for Justice" Police Brutality March	NYC027921
JJ	Sean Bell Verdict Demonstration After Action Report	NYC027316
KK	Declaration of Ed DeFreitas	DeFreitas Exhibit 13
LL	Declaration of Danny Lieberman	Lieberman Exhibit 1
MM	Bulletin Board Posting	DeFreitas Exhibit 18
NN	July 10, 2006 5BBC Board Meeting Minutes	5BBCCEM00004902
OO	E-Mail between Danny Lieberman and Jim Zisfein	5BBCCEM00002801
PP	Footage of Brooklyn Critical Mass ride on April 13, 2007	5BBCVID0000028
QQ	Footage of Brooklyn Critical Mass ride on July 11, 2008	5BBCVID0000087
RR	Footage of Brooklyn Critical Mass ride on July 11, 2008	5BBCVID0000089
SS	Footage of Brooklyn Critical Mass ride on July 11, 2008	5BBCVID0000090
TT	Footage of Brooklyn Critical Mass ride on July 11, 2008	5BBCVID0000096
UU	Footage of Brooklyn Critical Mass ride on July 11,	5BBCVID0000097

	2008	
VV	July-August 2004 <i>Bicycletter</i>	5BBCEM00000611
WW	August 29, 2008 Manhattan Critical Mass Detail Request	NYC027018
XX	Declaration of Kenneth Jackson	Jackson Exhibit 1
YY	July 30, 2004 Manhattan Critical Mass Footage	NYC008750
ZZ	July 30, 2004 Manhattan Critical Mass Footage	NYC008751
AAA	July 30, 2004 Manhattan Critical Mass Footage	NYC008752
BBB	E-Mail from Madeline Nelson to Reverend Billy	5BBCEM00040479
CCC	E-Mail from Paul Browne	NYC009844
DDD	E-Mail from Paul Browne to Edward Skyler	NYC010126
EEE	Detail Request for "United Peace and Justice Anti-War March"	NYC030752
FFF	After Action Report for "United for Peace and Justice" March	NYC030776
GGG	Notice regarding "Ground Zero Motorcycle Ride"	NYC030782
HHH	Request relating to "NYC Century Bike Tour"	NYC030783
III	Detail Request for "Harlem Cycling Classic"	NYC030784
JJJ	West 106 th Street Safety and Bicycle Lane Project	Scholvin Exhibit 13
KKK	Declaration of Hugh McGlinchy	Layne Exhibit 7
LLL	Declaration of Madeline Nelson	Nelson Exhibit 1
MMM	Declaration of Josh Gosciak	Gosciak Exhibit 1
NNN	Declaration of Luke Son	Son Exhibit 1
OOO	Declaration of Edward Ravin	Declaration Accompanying Plaintiffs' Motion for a Preliminary Injunction
PPP	Demonstrative Exhibit A: 2004-2008 Ride Size Breakdown	N/A
QQQ	Demonstrative Exhibit B: Riders Per Year	N/A
RRR	Demonstrative Exhibit C: Average Riders Per Year	N/A
SSS	Plaintiffs' Responses and Objections to Defendants' Fourth Set of Interrogatories and Document Requests	N/A
TTT	Plaintiffs' Responses and Objections to Defendants' Fifth Set of Interrogatories	N/A

Defendants reserve the right to use or introduce into evidence any and all exhibits on Plaintiffs' exhibit list.

VIII. STIPULATIONS AND OBJECTIONS WITH RESPECT TO EXHIBITS

Any objections not set forth herein will be considered waived absent good cause

shown.

Plaintiffs object to all or portions of the following exhibits listed by Defendants on grounds of hearsay: T, U, V, W, X, Z, AA, CC, DD, GG, MM, VV, BBB, CCC, DDD.

Plaintiffs object to all or portions of the following exhibits listed by Defendants on grounds of relevance: DD, BBB.

Defendants object to all or portions of the following exhibits listed by plaintiffs on the grounds of hearsay: 20, 21, 26, 27, 28, 31, 53, 57, 60, 79, 184, 185, 234, 235, 244, 248, 249, 271 and 272.

Defendants object to all or portions of the following exhibits listed by plaintiffs on the grounds of relevance: 59, 234, 235, 247, 271 and 272.

IX. PLAINTIFFS' WITNESS LIST

The witnesses listed below may be called at trial. No witness not identified herein shall be permitted to testify on either party's case in chief absent good cause shown.

MADELINE NELSON
ANDREW A. BEVERIDGE
HUGH MCGLINCY

GIDEON OLIVER
LUKE SON

EDWARD RAVIN
ED DEFREITAS
JOSH GOSCIAK
JOHN PUCHER
KENNETH T. JACKSON
SHARON BLYTHE
ELIZABETH SHURA

LT. DANIEL ALBANO
CHIEF STEVEN ANGER
DEPUTY COMMISSIONER PAUL
BROWNE
LT. JOSEPH S. CANECO
DEPUTY INSPECTOR DENNIS
DEQUATRO
OFFICER RICHARD EVANS
JOAN SCHOLVIN
COMMISSIONER RAYMOND KELLY
SGT. MARK LAYNE
CHIEF STEPHEN PARAGALLO
CHIEF MICHAEL SCAGNELLI
BRUCE SMOLKA

CHIEF JAMES TULLER
LT. LUIS TURCO
OFFICER KENNETH WAGNER
CAPTAIN EDWARD WINSKI

Plaintiffs' designations of deposition testimony appear in Appendix F. Plaintiffs object to the designated testimony of Steve Vaccaro in its entirety on the ground that it is irrelevant. Plaintiffs otherwise refer to and incorporate objections made by Plaintiffs' counsel during depositions and reserve the right to object to deposition testimony designated by Defendants.

X. DEFENDANTS' WITNESS LIST

The witnesses listed below may be called at trial. No witness not identified herein shall be permitted to testify on either party's case in chief absent good cause shown.

DENNIS GANNON
SAM CENTAMORE
THOMAS GRAHAM
KENNETH WAGNER
MARK LAYNE
DENNIS DEQUATRO

DANIEL LIEBERMAN
ALFREDO GARCIA
JAMES ZISFEIN
ED DEFREITAS
PETER ENGEL
STEVE VACCARO

Defendants' designations of deposition testimony appear in Appendix G. Defendants refer to and incorporate objections made by Defendants' counsel during depositions and reserve the right to object to deposition testimony designated by Defendants.

XI. RELIEF SOUGHT

Proposed Form of Injunction

I. Injunction Against Retaliatory and Selective Enforcement

A. Defendants shall not discriminate in the enforcement of the Parade Rules, the New York State Vehicle and Traffic Laws, or Chapter 34 the Rules of the City of New York against any individual on the basis of actual or perceived affiliation with any bicycling group, organization or event. Defendants shall not subject participants in group bicycle rides to any different or heightened law enforcement other than that to which all other persons in New York City are subjected.

B. Defendants shall not interfere with, or take any actions for the purpose of discouraging, any lawful group bicycle ride in any roadway or street that is open to non-motor vehicle traffic.

C. Defendants shall not enforce New York State Vehicle and Traffic Law §1234 against any individual in the City of New York. Defendants shall issue a corrective notice to NYPD personnel responsible for enforcing traffic laws regarding the inapplicability of VTL §1234 in New York City and the right of bicyclists to occupy a lane of traffic.

D. The presence or conduct of undercover or plainclothes officers at group bicycle rides shall not be counted or considered in determining whether a violation of law has occurred by participants in such rides.

Record-keeping

E. Defendants shall record each instance where two or more bicyclists with an actual or perceived affiliation with a bicycling group, organization or event are surveilled, stopped or followed, and must maintain in one location information sufficient to ascertain with respect to each such instance: (1) the number of bicyclists ; (2) the basis for the surveillance, stop or following; (3) the date, time and location; (4) the names and identification numbers of the officers involved; (5) whether any warning, dispersal order, or summons was issued or an arrest was made, as well as the specific violations or

charges cited; and (6) any use of physical force, as well as resulting injuries to the bicyclists and/or officers and the circumstances that prompted the use of force.

F. Defendants shall maintain in one location, segregated from other summonses, copies of all traffic summonses related to non-commercial bicycling.

G. Defendants shall maintain in one location all copies of all detail rosters, command logs, arrest reports and/or supporting affidavits, and after-action reports and/or memos related to group bicycling events.

Officer Training

H. Defendants shall administer police academy and in-service training to NYPD personnel on the laws applicable to bicyclists and require officers to issue a command to stop to a bicyclist before making a traffic stop through physical force or contact.

I. Subject to the provisions set forth below concerning the appointment of an Independent Monitor, an Independent Monitor shall review and evaluate all training currently provided or sponsored by the NYPD regarding group bicycle rides and procedures used by police in connection with policing group bicycle rides and conducting traffic stops of bicyclists. This review shall examine whether the training provided or sponsored by the NYPD effectively instructs officers (1) to comply with the requirements of Section I.A.-I, above, and Section II.A.-I., below, and (2) to ensure the safety of officers and bicyclists.

Monitoring Compliance

J. Defendants shall be subject to oversight by an Independent Monitor, to be appointed by the Court, who will monitor and report on Defendants' compliance with the injunctive relief provisions set forth herein. Defendants shall bear all costs of the Independent Monitor. The Monitor shall be an agent of the Court and may testify in this

case regarding any matter relating to the implementation, enforcement or dissolution of the injunctive relief herein granted. The Monitor shall not testify in any other litigation or issue statements or make findings with regard to any act or omission of the Defendants, or their agents or representatives, except as required or expressly authorized by the Court. The Monitor shall not be retained by any current or future litigant or claimant in a claim or suit against Defendants.

K. Defendants shall provide the Monitor with full and unrestricted access to all staff, facilities and non-privileged documents (including databases) necessary to carry out the duties assigned to the Monitor. In the event of an objection, the Court shall make the final determination regarding access. In any instance in which the Defendants object to access, they must establish that the access sought is not relevant to monitoring the implementation of the injunctive relief ordered by the Court, or that the information requested is privileged and the interest underlying the privilege cannot be adequately addressed through the entry of a protective order. In any instance in which Defendants assert that a document is privileged, it must provide the Monitor with a privilege log describing the document and the privilege asserted. Other than as expressly provided herein, with respect to the Independent Monitor, this paragraph is not intended, and should not be interpreted to reflect a waiver of any privilege, which Defendants may assert against any person or entity other than the Independent Monitor.

L. Each month, Defendants shall provide copies of records described in Section I.E.-G. to the Independent Monitor, notwithstanding a claim of privilege.

M. The Monitor, *inter alia*, shall review and evaluate Defendants' compliance with Sections I.A.-I. and II.A.-I.

N. During the first year after this order is entered, the Independent Monitor shall submit quarterly reports to the Court detailing the Defendants' compliance with and

implementation of the injunctive relief ordered by the Court. Thereafter, the Monitor shall submit such reports semiannually or more frequently as the Monitor deems appropriate.

O. Within 90 days following entry of the Court's Order and every six months thereafter for a period of three years, the NYPD shall submit to the Court and the Monitor, with a copy to Plaintiffs, a status report delineating all steps taken during the reporting period to comply with each provision of the Order.

P. While the Court maintains jurisdiction over this action, the Plaintiffs shall have access to all records and reports provided to the Monitor.

II. Application of Parade Rules

A. As applied to bicyclists, Defendants shall not enforce the Parade Rules requirement that "a recognizable group of 50 or more pedestrians, vehicles, bicycles or other devices moved by human power, or ridden or herded animals proceeding together upon any public street or roadway" is deemed a "parade." 38 Rules of the City of New York § 19-02(a).

B. Defendants shall not enforce the provision of the Parade Rules requiring that the police commissioner may not grant a permit for the use of any street that is "subject to great congestion or traffic and is chiefly of a business or mercantile character" between 9 a.m. and 6:30 p.m. on all days except Sundays and holidays. NYCAC § 10-110(a)(2).

C. Defendants shall not enforce the provision of the Parade Rules providing that permit applications must contain "the width of the roadway to be occupied by the parade." 38 Rules of the City of New York § 19-03(b)(2)(vii).

D. Defendants shall not enforce the provision of the Parade Rules requiring that "the chief officer of any procession, parade or race, for which a permit may be

granted by the police commissioner, shall be responsible for the strict observance of all rules and regulations included in said permit.” NYCAC § 10-110(a)(5).

E. Defendants shall not enforce the provision of the Parade Rules that requires a parade permit application to include “the identity of any grand marshal or chief officer of the parade, his or her name, address and telephone number.” 38 Rules of the City of New York § 19-03(b)(2)(x).

F. Defendants shall not enforce the provision of the Parade Rules that prohibits all parades on Fifth Avenue in the borough of Manhattan, unless the parade was held at that location prior to July 27, 2001, when the Parade Rules became effective. 38 Rules of the City of New York § 19-04(d)(viii).

G. Defendants shall not require that parade permit applications be notarized by the applicant.

H. Defendants shall institute a web page with (1) an online form for submission of parade permit applications, (2) designation of one point of contact within NYPD with principal responsibility for the parade permit review process, as well as a separate point of contact for appeals.

I. Defendants shall issue an Operations Order, to be distributed to all commands, instructing NYPD officers as to which provisions of the Parade Rules may not be enforced and identifying the specific point of contact for parade permit applications.

III. Effective Date and Duration

A. The Court’s Order shall become effective upon filing. Except where otherwise specifically indicated, Defendants shall implement all provisions of the Court’s order as soon as practicable and no later than 60 days after entry of the Order.

B. The Court shall retain jurisdiction of this action for all purposes during the

term of the Order. At any time after both three years have elapsed since entry of the Order and substantial compliance with the terms of the Order have been maintained for 18 continuous months, Defendants may move to terminate the injunction. Any motion to terminate must detail all aspects of Defendants' compliance with each provision of the Order, supported by affidavits and supporting documentation. Plaintiffs shall have 90 days from receipt of the Defendants' motion to file any objections.

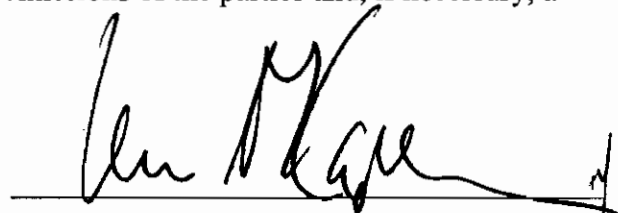
C. "Substantial compliance" means there has been performance of the material terms of the Order, including, but not limited to, Sections I.A.-I. and II.A.-I. Materiality shall be determined with reference to the overall objectives of the Order.

Attorneys' Fees

A. To the extent Plaintiffs prevail in establishing their right to relief, Plaintiffs seek an award of reasonable attorneys fees and costs incurred in doing so, in an amount to be established pursuant to the submissions of the parties and, if necessary, a hearing before the Court.

Dated:

5/8/09



U.S.D.J.